Perry

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adams Corporate Solutions

File: B-241097

Date: January 9, 1991

Timothy R. Adams for the protester.
Barry D. Segal, Esq., General Services Administration, for t
agency.
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General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest that contracting agency failed to promptly notify protester that its technical proposal was technically unacceptable and not included in the competitive range is denied where the late notification results in no prejudice t the protester's competitive position.

DECISION

Adams Corporate Solutions (ACS) protests the award of a contract to Competitive Dynamics, Inc. under request for proposals (RFP) No. GS-00P-90-BQ-0002 issued by the General Services Administration (GSA) for client relations training for GSA personnel on a nationwide basis. ACS alleges that t contracting agency acted contrary to proper contract award procedures and exhibited bias against the firm.

We deny the protest.

The procurement, issued as a total small business set-aside, anticipated a firm, fixed-price, indefinite delivery contrac for an off-the-shelf customer relations training program, fo a base year and 2 option years. The solicitation notified offerors that the government may award the contract on the basis of initial proposals, without discussions, and as a result, offerors should prepare their technical proposals in accordance with the instructions set forth in the RFP, and contain an offeror's best terms from both a price and technical standpoint. Evaluation of the technical proposals

was to be performed in accordance with the following factors and subfactors, listed in descending order of importance:

Organization and Personnel Qualifications

Organization
Personnel Qualifications

Course Presentation Material

Written Course Materials
Videotape of an Actual Course Presentation

Technical Approach

Approach
Methods

Section L of the solicitation, entitled Instructions, Conditions and Notices, contained a detailed explanation of what offerors needed to provide in their proposals, and on what basis the information would be evaluated. The RFP provided that technical factors were more important than pri in evaluating proposals for award.

The agency received nine proposals in response to the RFP, including one from the protester. A source selection evaluation board (SSEB) evaluated each initial proposal and assigned a numerical score, on a scale from 0 to 100. As a result of this evaluation, ACS received a technical score of zero points, because there were significant deficiencies in every section of its proposal. Some of the major deficienci are as follows: (1) it provided no evidence of specific client relations experience; (2) it failed to submit an organization chart; (3) ASC submitted only one resume of a qualified instructor (that of the president of the company); (4) it did not submit a videocassette of an actual course presentation; and (5) it was not offering a true "off-the-shelf" program. As a result of the initial technical evaluation, the SSEB recommended that only the four highest scored proposals be included in the competitive range.1/

After the initial proposals had been evaluated, the contracting agency realized that the last three line items f the second, final option year had been omitted from the RFP' pricing schedule, although those line items had been listed

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1/ The technical scores of the offerors recommended for inclusion in the competitive range fell between 93.4 and 74. points.

the page where offerors were to summarize and total their offers for evaluation purposes. Due to the omission of thes three items from the pricing schedule, the contracting offic transmitted to all offerors who initially submitted proposal including ACS, a revised pricing schedule which included the omitted line items under cover of a letter which stated that award without discussions was being contemplated, and which requested a "best and final offer (BAFO)" to be submitted. Essentially, the letter was intended to permit offerors to revise their proposals if necessary, based on review of the detailed description of the line items which had been omitte from the original solicitation.

In response to this request for a "BAFO," ACS submitted a brief letter in which it noted that its price for the three omitted items already was shown in its price summary and tha its original price proposal remained unchanged, but that it wished to add to its technical proposal an offer to provide to 2 hours of telephone assistance for a period of 90 days after the Executive Overview Course was held. The agency to note of this proposed addition but considered it so minor in relation to the deficiencies in ACS's proposal that the original evaluation remained unchanged.

Concerned about the "price realism" of the offers received even after a revised pricing schedule had been provided, the contracting officer prepared a second letter requesting another "BAFO" from all technically acceptable offerors. Du to a mistake, however, a copy of this letter was sent to ACS which merely confirmed its prior offer.

When the agency discovered its error, it conducted a third round of discussions with the offerors who were in the competitive range, and requested that they submit a third BAFO. As a result of the evaluation of these BAFOs, the contract was awarded to Competitive Dynamics, Inc. After being notified of this award, and that its proposal was rate as technically unacceptable, ACS filed a protest in our Office.

Initially, ACS challenged the award on the premise that the agency had initially determined that ACS's proposal was technically acceptable, but must have later lowered its rati and awarded the contract to another offeror at a higher pric ACS argues that since it did not modify its technical propos after the second request for BAFOs, there is no justificatio for any reversal of a determination that ACS's proposal was technically acceptable. The protester contends that GSA's actions in this regard demonstrate that it was biased agains ACS. The protester further contends that if the agency doubted ACS's ability to perform, then the agency was requir

to refer this issue to the Small Business Administration (SBA) for a certificate of competency (COC) proceeding.

As the above narrative indicates, the contracting agency's report shows that at all times it rated ACS's proposal as technically unacceptable, and did not--as the protester surmised--initially find it acceptable only to later reverse that determination. After reviewing the agency report, ACS revised its grounds of protest. In these comments, ACS "concedes" that GSA was within its rights to disqualify the firm from the competition, but argues that the agency's conduct in failing to promptly notify ACS of its technical unacceptability, and in fact requesting two BAFOs from it, exhibits bias against ACS. ACS also argues that the agency's failure to inform ACS of the deficiencies in its proposal prevented ACS from submitting corrections during discussions, and this prevented it from being more competitive.

Although GSA's actions indicate a careless application of proper procurement procedures, we do not find that ACS was prejudiced in any material way by the agency's mistakes. Essentially, the result of the agency's actions was to violat its obligation under the Federal Acquisition Regulation (FAR) to promptly notify ACS that its proposal was not included in the competitive range, which the agency now recognizes it could and should have done. FAR §§ 15.609(c); 15.1001(b). Although ACS was sent two requests for BAFOs, we note the first request was sent to ACS because of the contracting officer's erroneous belief that since there were some individual line items omitted from the RFP pricing schedule (although not omitted from the pricing summary) all offerors, regardless of whether their technical proposals would place them in the competitive range, should be provided with a revised pricing schedule and given an opportunity to respond In fact, an agency need not issue an amendment to an offeror that is not in the competitive range where the subject matte of the amendment is not directly related to the reasons the agency has for excluding the offeror from the competitive range. The MAXIMA Corp., B-222313.6, Jan. 2, 1987, 87-1 CPD ¶ 1; FAR § 15.606(b). Since ACS's technical proposal was so deficient that it was awarded a score of zero points, the contracting officer could have eliminated ACS from the competition without providing it with the revised schedule.

That the agency's request to ACS for a second "BAFO" was simply an accident is demonstrated in the record by the fact that ACS's proposal was never in the competitive range, and was at no time rated as technically acceptable. Therefore, although the agency's actions may have led ACS to believe tha its proposal was in line for award, in reality, ACS was outside of the competitive range as of the evaluation of initial proposals. ACS was not prejudiced by the GSA's

actions under these circumstances, because the contracting officer's mistakes never injured ACS's competitive position chance for award. Essentially, the only harm done was that ACS submitted two letters which it need not have done had it been properly advised at the outset that it had been eliminated from the competitive range. In view of the brevi of the letters, in which ACS stated that its proposal remain unchanged, we think this was a de minimis burden.

To the extent that ACS argues that the contracting officer should have conducted discussions with ACS concerning the deficiencies in its technical proposal, we disagree. Generally, if an offer, as submitted, is technically unacceptable or so deficient in information required by the RFP that it would necessitate major revisions to become technically acceptable, the contracting agency is not obligated to conduct discussions with that offeror concernin the inadequacies of its offer. Femme Comp Inc., B-239192, Aug. 13, 1990, 90-2 CPD ¶ 121. Given ACS's failure to provi a videotape and an organization chart, both of which were specifically required by the RFP, as well as the multitude o other deficiencies that caused its technical score of zero points, so that only a complete revision of its proposal wou render its technical proposal acceptable, GSA's decision not to conduct discussions with ACS was reasonable.2/

The record does not support the protester's allegation that GSA's actions with respect to ACS demonstrate that it was biased against ACS. Although the agency made some mistakes during the procurement, the technical evaluation itself was done in accordance with the stated evaluation criteria. Speculation as to why the agency failed to promptly notify A of this fact does not constitute evidence of bias. See Canaveral Maritime, Inc., B-238356.2, July 17, 1990, 90-2 CP ¶ 41.

ASC's final allegation is that if the agency determined that ACS did not have the capacity to perform, it should have referred the matter to SBA for a COC proceeding. Here, ther is no such requirement, since the contracting officer did no find that ACS was nonresponsible, but rather, that ACS's proposal was technically unacceptable. An agency is not required to refer the rejection of a small business offeror'

2/ ACS alleges that had it been notified of its proposal's deficiencies, it would have submitted evidence of federal an private contracts awarded after the initial submission. Sin this does not relate to almost all of the cited deficiencies, we fail to see how ACS was prejudiced by not being able to submit this information.

technical unacceptability to SBA for a COC proceeding. TM Sys., Inc., B-236708, Dec. 21, 1989, 89-2 CPD ¶ 577.

The protest is denied.

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for James F. Hinchman
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